

Voluntary Compliance Initiative Covering Policies of Insurance and Reinsurance Issued by Foreign Insurers and Foreign Reinsurers.

Announcement 2008-18

Section 1. Overview and Purpose of the Voluntary Compliance Initiative.

This announcement describes a voluntary compliance initiative by the Internal Revenue Service (IRS) regarding the foreign insurance excise tax. The purpose of this voluntary compliance initiative is to encourage foreign insurers, reinsurers, and other agents, solicitors and brokers to comply with their obligations under section 4371 through 4374 of the Internal Revenue Code (the Code), and in particular, with their obligations described in Revenue Ruling 2008-15, 2008-12 I.R.B.

Revenue Ruling 2008-15 generally clarifies the foreign insurance excise tax consequences under section 4371 *et seq.* of the Code with respect to premiums paid by one foreign insurer or reinsurer to another, including the consequences where the first-mentioned foreign insurer or reinsurer qualifies for an exemption from the foreign insurance excise tax under an income tax treaty with the United States and the second foreign insurer or reinsurer does not qualify for such an exemption.

In order to ensure that all participants in the industry are aware of these tax consequences and their associated reporting and record keeping obligations, and have a reasonable period of time to come into compliance with them, the IRS is announcing herein that, unless otherwise noted, it will not examine issues arising under the situations set forth in Rev. Rul. 2008-15 in respect of reinsurance premiums paid by one foreign insurer or reinsurer to another prior to October 1, 2008, the first day of the quarterly excise tax period beginning six months after this announcement is published in the Internal Revenue Bulletin. The specific terms of this voluntary compliance initiative are as follows.

Section 2. Eligibility for the Voluntary Compliance Initiative.

.01 Eligible Foreign Person. Any foreign insurer or reinsurer, as defined in section 4372(a), or any other foreign person liable for the tax imposed by section 4371 of the Code ("eligible foreign person"), is eligible to participate if such person has failed to file timely one or more Form 720 returns (Quarterly Federal Excise Tax Return) and pay or remit any foreign insurance excise taxes due with respect to premiums paid or received during any quarterly tax period ending prior to October 1, 2008. An eligible foreign person also includes any foreign insurer or reinsurer that has failed to satisfy the treaty-based return disclosure requirements of Treas. Reg. § 301.6114-1(c)(viii), if applicable, with respect to claiming an exemption from foreign insurance excise tax under a U.S. income tax treaty during any such period.

.02 Ineligible Failures to File. Notwithstanding that a foreign insurer or reinsurer is an eligible foreign person, certain failures by that person to file a Form 720 return and pay excise tax will not fall within the scope of the initiative. Accordingly, such failures to file and pay occurring during any quarterly tax period ending prior to October 1, 2008, will not

be protected from examination as described in Section 5 below, regardless of whether the foreign insurer or reinsurer is a participating taxpayer, as described in Section 3 below, in this voluntary compliance initiative. The failures to file that are not covered by this initiative include:

a. In the case of a foreign insurer or reinsurer that has entered into a closing agreement with the IRS based on Appendix A of Rev. Proc. 2003-78, 2003-2 C.B. 1029, or any predecessor revenue procedure, any failure to pay foreign insurance excise tax with respect to premiums received on policies issued by that foreign insurer or reinsurer that do not qualify for an exemption from tax under the income tax treaty with the country in which it is resident because that foreign insurer or reinsurer has reinsured, in whole or in part, a policy of reinsurance with a foreign reinsurer not entitled to an exemption from tax under that treaty or any other treaty; and

b. In the case of a foreign insurer or reinsurer that has entered into a closing agreement with the IRS based on Appendix B of Rev. Proc. 2003-78, 2003-2 C.B. 1029, any failure to pay foreign insurance excise tax with respect to premiums received on policies issued by that foreign insurer or reinsurer where, as part of a conduit arrangement, the foreign insurer or reinsurer reinsures, in whole or in part, a policy of insurance or reinsurance with any person not entitled to an exemption from tax under that treaty or any other treaty.

Section 3. Participation Requirements.

.01 Participating Taxpayers. A participating taxpayer under this voluntary compliance initiative is any eligible foreign person that timely files the applicable Form 720 return or returns and pays any foreign insurance excise taxes due with respect to premiums paid or received on or after October 1, 2008, or, if applicable, who timely discloses in accordance with section 6114 of the Code its treaty-based return position that it is entitled to an exemption under an income tax treaty with the United States with respect to such premiums. If a participating taxpayer does not make any premium payment for policies of reinsurance covering contracts described in section 4371 of the Code during the quarterly tax period beginning on October 1, 2008, and is not otherwise obligated to file a Form 720 return to disclose a treaty-based return position, it may still participate in this compliance initiative if it timely files a blank Form 720 return with the notation described in Section 4 below.

.02 Recordkeeping Requirements. A taxpayer will not be considered a participating taxpayer, however, if it does not also comply with the record-keeping requirements in Treas. Reg. § 46.4371-4 with respect to premiums paid or received on or after October 1, 2008, which includes maintaining the appropriate records “for at least 3 years from the date any part of the tax became due or the date any part of the tax is paid, whichever is later, in such manner as to be readily accessible to authorized internal revenue officers or employees”.

.03 Determination of Date of Receipt. For purposes of determining whether foreign insurance excise taxes are due with respect to premiums received by a foreign insurer or reinsurer, a premium will be treated as received on or after October 1, 2008, if the date on which the liability for the foreign insurance excise tax attaches, within the meaning of Treas. Reg. §46.4374-1(b), occurs on or after October 1, 2008. For example, if an insured pays to a participating taxpayer, prior to October 1, 2008, a premium on a covered policy that is exempt from foreign insurance excise tax under section 4371 of the Code by reason of an income tax treaty, and the participating taxpayer makes a premium payment reinsuring the risk covered by such policy with a person not entitled to the benefits of an income tax treaty on or after October 1, 2008, liability for the foreign insurance excise tax with respect to the premium paid to the participating taxpayer will generally attach as of the date that the second premium is paid by the participating taxpayer, and will, therefore, be treated as received by the participating taxpayer on or after October 1, 2008.

Section 4. Notification Procedures for Participating Taxpayers.

A participating taxpayer under this voluntary compliance initiative must file its Form 720 return described in Section 3 above with the Cincinnati Service Center at the following address:

Department of Treasury
Internal Revenue Service Center
Cincinnati, OH 45999-0009

In addition to filing its Form 720 return with the Cincinnati Service Center, a participating taxpayer must also notify the IRS of its election to participate by including a notation, as described below, on the Form 720 return.

A participating taxpayer must notate in red print at the top of the Form 720 return the following statement:

Election to participate in FET Voluntary Compliance Initiative pursuant to
Announcement 2008-18.

Section 5. Terms for Participating Taxpayers.

Except as provided in Section 2.02, the IRS agrees not to examine any participating taxpayer (whether a foreign insurer, reinsurer, agent, solicitor or broker) with respect to tax liabilities arising under the four situations set forth in Rev. Rul. 2008-15, or any similar fact pattern, to the extent that premiums are paid or received by the participating taxpayer during any quarterly tax period prior to October 1, 2008.

Section 6. Non-participating Taxpayers.

A non-participating taxpayer under this voluntary compliance initiative is defined as an eligible foreign person who is not a participating taxpayer.

The IRS may: (a) conduct examinations of a non-participating taxpayer covering *any and all* excise taxes due under section 4371 of the Code for any open tax periods, including tax periods beginning prior to October 1, 2008; and, (b) determine and assess the correct excise taxes due under section 4371 of the Code, including interest, additions to tax, and, if applicable, penalties under section 6712 of the Code for failure to disclose a treaty-based return position under section 6114 of the Code and the regulations thereunder, and penalties under section 7270 of the Code for failure to comply with section 4374 of the Code.

Section 7. Contact Information.

Various personnel from the Office of Large and Mid-Sized Business Unit, the Office of Small Business/Self Employed Business Unit, and the Office of the Associate Chief Counsel (International), participated in drafting this announcement. For further information regarding this announcement contact Charles E. Jenkins with the Office of Large and Mid-Sized Business Unit (Pre-Filing and Technical Guidance) via e-mail at charles.e.jenkins@irs.gov, or Jody Angelo with the Office of Small Business/Self Employed Business Unit (Excise Policy) via e-mail at jody.j.angelo@irs.gov.